

REMARKS

This Amendment and Response is made in reply to the Final Office Action mailed June 18, 2010, in which the Examiner:

rejected claims 2-5, 9, 14, 15 and 18 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;

rejected claim 5 under 35 U.S.C. § 112, second paragraph, as indefinite;

rejected claims 2 and 15 under 35 U.S.C. § 102(b) as anticipated by United States Patent No. 6,112,389 to Boltshauser ("Boltshauser");

rejected claim 2 under 35 U.S.C. § 102(b) as anticipated by United States Patent No. 6,122,821 to Dornieden *et al.* ("Dornieden"); and

rejected claims 2-5, 9, 14 and 18 under 35 U.S.C. § 103(a) as obvious over Applicants' Admitted Prior Art ("AAPA"), in view of Dornieden.

Claims 1-12, 14, 15 and 18-21 are pending in the present application. Claims 1, 6-8, 10-12 and 19 were previously withdrawn from consideration. Claims 13, 16 and 17 were previously canceled. Claims 2-4, 9, 14 and 18 are amended and new claims 20 and 21 are added herewith. Claims 2 and 18 are independent claims. Claims 3-5, 9, 14, 15, 20 and 21 depend, either directly or indirectly, from independent claim 2.

Regarding the rejections of claims 2-5, 9, 14, 15 and 18 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, the Examiner argues that the specification fails to support a number of conveyor belts other than two. (Final Office Action, pages 2-3.) Applicants submit that the specification provides more than enough support for the recitation "at least two conveyor belts," for the subject matter of the claim need not be described literally (*i.e.*, using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. M.P.E.P. § 2163.02. Nevertheless, Applicants have amended claims 2 and 18 to recite "two conveyor belts," and respectfully submit that the rejection of claims 2 and 18 for failing to comply with the written description requirement is now moot.

For at least the same reasons, Applicants submit that the rejections of claims 4, 14 and 18 under 35 U.S.C. § 112, first paragraph, as failing to comply

with the written description requirement are also moot. Although the Examiner argues that the specification fails to support ranges of drawing processing stations, sealing processing stations, coining stations or bending stations (Final Office Action, pages 2-4), Applicants submit that the specification provides more than enough support for the claims, as the subject matter of the claim need not be described literally (*i.e.*, using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. M.P.E.P. § 2163.02.

Nevertheless, in order to advance the prosecution of the subject Application, Applicants have amended claims 3, 4, 9, 14 and 18 to address the Examiner's rejections, which are now moot.

For the foregoing reasons, Applicants submit that the rejections of claims 2-5, 9, 14, 15 and 18 under 35 U.S.C. § 112, first paragraph, are now moot, and respectfully request that they be withdrawn.

Regarding the rejection of claim 5 under 35 U.S.C. § 112, second paragraph, as indefinite, the Examiner argues that the term "the sealing processing station" lacks sufficient antecedent basis. (Final Office Action, page 4.) Applicants submit that the foregoing amendments to claim 4 provide sufficient antecedent basis for claim 5, which depends directly from claim 4. Accordingly, Applicants submit that the rejection of claim 5 under 35 U.S.C. § 112, second paragraph, is now moot, and respectfully request that it be withdrawn.

Regarding the rejection of claims 2 and 15 under 35 U.S.C. § 102(b) as anticipated by Boltshauser, amended claim 2 recites a processing device comprising an advancing mechanism and a plurality of processing stations arranged in succession along an advancement direction, wherein the advancing mechanism is adapted to advance a single row succession of objects along the advancement direction and comprises two conveyor belts arranged parallel to one another and driven in synchronism, wherein a plurality of individual object receivers are formed on the conveyor belts by opposed holding means, and wherein each of the plurality of processing stations is equipped to process a single object at a time. The Examiner argues that each of these features is shown

or disclosed in Boltshauser. (Final Office Action, pages 4-6.) Applicants respectfully disagree with the Examiner.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim, and the elements must be arranged as is required by the claim.

Applicants submit that the Examiner has improperly analyzed the teachings of Boltshauser with respect to the invention recited in claim 2, for Boltshauser fails to show or disclose an advancing mechanism adapted to advance a single row succession of objects along an advancement direction comprising two conveyor belts arranged parallel to one another and driven in synchronism, wherein a plurality of individual object receivers are formed on the conveyor belts by opposed holding means. Therefore, for at least the following reasons, Applicants submit that the rejection of amended claim 2 is improper, and must be withdrawn.

First, the Examiner has failed to follow the proper and accepted practice for evaluating “means-plus” claims, and the rejection of amended claim 2 must be withdrawn for at least this reason. According to Section 2182 of the Manual of Patent Examining Procedure, “means-plus” claims are to be analyzed by the Examiner according to a two-step process. The first step is to define the particular function of the claim limitation, including the limitations contained in the claim language, and only those limitations. M.P.E.P. § 2182, *citing Budde v. Harley-Davidson, Inc.*, 250 F.3d 1369, 1376, 58 U.S.P.Q.2d 1801, 1806 (Fed. Cir. 2001); *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1113, 63 U.S.P.Q.2d 1725, 1730 (Fed. Cir. 2002). The next step is to look to the specification and the prosecution history, and to identify the corresponding structure for that function. Under this second step, a structure disclosed in the specification is a “corresponding” structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim. M.P.E.P. § 2182, *citing Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1210, 68 U.S.P.Q.2d 1263, 1267 (Fed. Cir. 2003), *quoting B. Braun Med. Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424, 43 U.S.P.Q.2d 1896, 1900 (Fed. Cir. 1997). If the

specification defines what is meant by the limitation for the purposes of the claimed invention, the Examiner should interpret the limitation as having that meaning. M.P.E.P. § 2182, *citing B. Braun Medical*, 124 F.3d at 1424, 43 U.S.P.Q.2d at 1900.

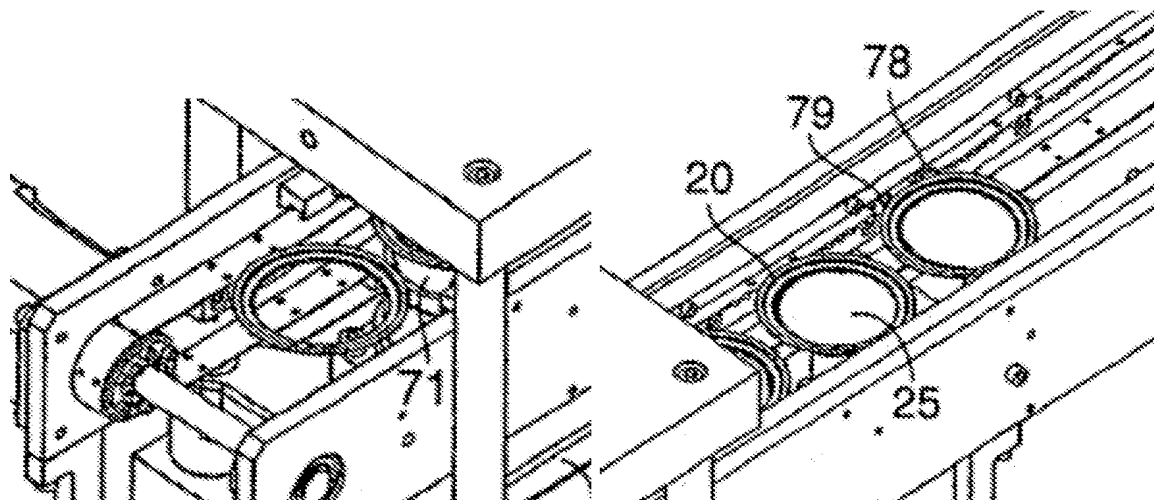
The specification and prosecution history clearly identify exemplary “opposed holding means” under reference numerals 78 and 79. *See* Original Claims filed Nov. 11, 2005 (identifying exemplary opposed holding means 78, 79 in original claim 13); Amendment and Response to Office Action dated Mar. 22, 2010 (incorporating “opposed holding means” into independent claim 2 and canceling claim 13). According to paragraph 0027 of the specification:

Preferably fixing means are arranged on the belts which shapewise mate with the covers or objects in the advancing direction so that no shifting of the objects takes place as a result of their advancement. For the circular covers in FIG. 14 the fixing elements for one cover are shown at 78 and 79, which elements are fixed to the conveyor belts and so mate with the corresponding fixing or holding elements arranged on the outer circumference of the covers lying on the conveyor belts that the covers are fixed in the transport direction and in the opposite direction and also in the direction perpendicular to the transport plane. Nevertheless, a lifting of the cover upwardly without anything further is possible. The holding means 78 and 79 can for this also be lightly magnetically implemented so that the magnetic force has to be overcome for the lifting of the cover 20 from the conveyor belt 75. The holding means 78 and 79 are shown only for the one cover in the drawing and in the case of the other covers are omitted for simplicity. Nevertheless, on the conveyor belts, which as a rule and as indicated are toothed belts, the fastening points for the remaining holding means are indicated.

Application ¶ 0027 (emphasis added); *see also* Application, FIG. 14.

Moreover, the specification also makes clear that the individual object receivers formed on the conveyor belts by opposed holding means must enable the receivers to mate with the outer circumference of the covers and to permit upper work tools and lower work tools to work on the covers, as is shown in portions of Figure 14, reproduced below. *See* Application ¶¶ 0015-0016, FIGS. 10-13 (showing upper and lower work tools), FIG. 14 (showing individual object

receivers entering processing station 47 and tear-off cover 25 on other individual object receivers formed by opposed holding means 78, 79).



Individual Object Receivers Shown in Figure 14

Therefore, based on the clear language of the specification and the prosecution history, Applicants submit that the “individual object receivers . . . formed on the conveyor belts by opposed holding means” recited in amended claim 2 must be fixed to the conveyor belts and enable the objects to be worked upon by upper and lower tools, and must mate with the outer circumference of the covers themselves, in order to fix the covers in the transport direction, in the direction opposite to the transport direction, and in the direction perpendicular to the transport plane.

The Examiner argues that Boltshauser discloses “individual object receivers” that are “formed by opposed holding means” that include magnetic pallets 7 and magnets located “on” the lower side of the belts that “oppose” the magnetic pallets and the objects 3 fixed thereto. (Final Office Action, pages 5-6.) Applicants disagree with the Examiner. As is clearly shown in Figure 5 of Boltshauser, reproduced below, magnets 6 and pallets 7 are not located on belts 5, 8, and cannot permit objects to be worked upon by both upper and lower tools. Moreover, neither magnets 6 nor pallets 7 restrict the motion of the cans 3 in any direction – as is shown below, a simple nudge from the deviation surface 10 is all that is needed to move the cans 3 from belt 8 to belt 5.

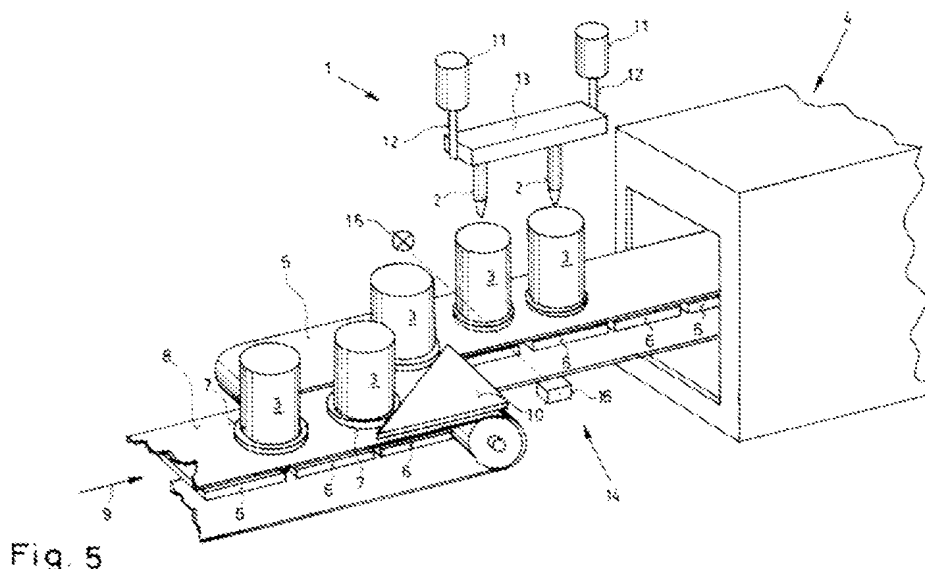


Figure 5 of Boltshauser

Second, Boltshauser fails to show or disclose an advancing mechanism adapted to advance a single row succession of objects along the advancement direction and comprising two conveyor belts arranged parallel to one another and driven in synchronism. The Examiner argues that belts 5, 8 of Boltshauser, shown above in Figure 5, “are considered to be driven in synchronism . . . in that they must be ‘synchronized’ to operate at the same time in order for the arrangement to operate as intended.” Again, Applicants respectfully disagree with the Examiner.

In both the non-final Office Action mailed November 20, 2009, and in the outstanding Final Office Action, the Examiner has failed to identify any express disclosure in Boltshauser that states that the belts 5, 8 are “driven in synchronism.” Therefore, in order for Boltshauser to anticipate amended claim 2, the Examiner must demonstrate that Boltshauser discloses belts 5, 8 that are inherently “driven in synchronism.” M.P.E.P. § 2131, quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

Applicants submit that the Examiner has failed to make such a showing, however. In order to establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.

M.P.E.P. § 2112. Inherency may not be established by probabilities or possibilities, for the mere fact that a certain thing may result from a given set of circumstances is not sufficient to establish the inherency of that result or characteristic. M.P.E.P. § 2112, *citing In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999); *In re Rijckaert*, 9 F.3d 1531, 1534, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). In the outstanding Final Office Action, and in the non-final Office Action dated November 20, 2009, the Examiner failed to consider countless other situations in which the belts 5, 8 of Boltshauser may operate independently.

For example, if the apparatus of Boltshauser shown in Figure 5 above was operated with belt 8 traveling at X feet per second, and with belt 5 traveling at Y feet per second, and cans 3 were to be spaced A feet apart on belt 8, those of ordinary skill in the art would recognize that cans 3 would seamlessly transfer from belt 8 to belt 5 after striking deviation surface 10 and would be spaced $(A/X) \cdot Y$ feet apart on belt 5. The cans 3 would not, as the Examiner argues, “back up and eventually fall on the floor,” in at least this situation. Thus, it is not “necessarily present” in Boltshauser that belts 5, 8 are “driven in synchronism.”

Moreover, Applicants further submit that the Examiner’s reasoning misconstrues the meaning of the term “synchronism” and ignores the plain language of Boltshauser itself. The term “synchronism” is defined as “coincidence in time; contemporaneousness; simultaneousness” or “arrangement or treatment of synchronous things or events in conjunction,” and the term “synchronous” is defined as “going on at the same rate and exactly together; recurring together.” See Dictionary.com, “synchronism” and “synchronous,” available at <http://dictionary.reference.com/> (last visited Aug. 17, 2010). The plain and ordinary meanings of these terms is supported by paragraph 0027 of the specification:

In FIG. 14, the circulating conveyor arrangement 52 is now explained in more detail, with this arrangement having two circulating conveyor belts 75 and 76 with a corresponding drive 77. The two conveyor belts 75 and 76 are synchronously driven. In this way, individual conveying stretches of the advancing arrangement 52 can be formed or the entire advancing arrangement can be made as a single stretch with

correspondingly long belts 75 and 76 being used. The drive 77 effects a transportation in the advancing direction in such way that the conveyor bands are stopped when the objects, for example, the covers, are located in the processing stations, in order for them to be processed at those stations. After the carrying out of the processing steps the conveyor bands are again moved by one step in the advancing direction so that each cover is moved into its next processing station. The objects or covers lie on both sides with their edge regions on the conveyor belts.

Application ¶ 0027 (emphasis added); *see also* Application, FIG. 14.

In view of the clear definitions of “synchronism” and “synchronous,” and the disclosure of the subject Application, Applicant respectfully submits that Boltshauser fails to show or disclose an advancing mechanism that is adapted to advance a single row succession of objects along the advancement direction and comprises at least two conveyor belts arranged parallel to one another and driven in synchronism. The scope of claim coverage is to be determined “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art.” M.P.E.P. § 2111, *quoting Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (emphasis added). While Boltshauser discloses a pair of belts 5, 8, *see* Boltshauser, FIG. 5, Boltshauser fails to show or disclose that belts 5, 8 are driven in synchronism, *i.e.*, “going on at the same rate and exactly together,” and thus fails to anticipate claim 2 for at least this reason.

In fact, Boltshauser expressly states that its belts 5, 8 need not operate “in synchronism,” for the systems disclosed therein may include an accumulation zone 46 in which pallets may accumulate if they arrive at one point before they can be transferred to the next point:

A belt conveyor joins to the cleaning zone and includes an accumulating section 46 which retains containers which cannot be passed for a times. The pallets are preferably retained by an actuatable retaining means, particularly by a barrier against which the pallets of the containers which are adjacent to the retaining means will prop. The conveying surface passes slidingly below the joining surfaces of the accumulated pallets.

Boltshauser, col. 5, ll. 49-56 (emphasis added).

Therefore, the Examiner's argument that belts 5, 8 "must be 'synchronized' to operate at the same time in order for the arrangement to operate as intended" is not supported by the express teachings of Boltshauser.

Thus, for any of the foregoing reasons, Applicants submit that Boltshauser fails to show or disclose an advancing mechanism comprising two conveyor belts that are either arranged parallel to one another and driven in synchronism or contain a plurality of individual object receivers formed thereon by opposed holding means, and thus fails to anticipate amended claim 2. For at least the same reasons, Applicants submit that claim 15, which depends directly from amended claim 2, is also not anticipated by Boltshauser. Applicants respectfully request that the rejections of claims 2 and 15 be withdrawn.

Regarding the rejection of claim 2 under 35 U.S.C. § 102(b) as anticipated by Dornieden, the Examiner argues that each of the features recited in these claims is shown or disclosed in Dornieden. (Final Office Action, page 6.) Again, Applicants respectfully disagree with the Examiner, and submit that amended claim 2 is not anticipated by Dornieden, at least because Dornieden, like Boltshauser, fails to show or disclose a plurality of individual object receivers are formed on the conveyor belts by opposed holding means.

Dornieden describes an assembly apparatus comprising a conveyor 13 with a pair of parallel belts 14 driven over a downstream drive pulley 28 and upstream drive pulley 29 by a belt 38 from motor 8. (Dornieden, col. 3, line 66 – col. 4, line 2.) Belts 14 have external teeth 16 that mesh with teeth 15 formed on the lower faces of workplace holders 5, such that when teeth 15 are meshed with teeth 16, holders 5 move in lockstep with belts 14. (Dornieden, col. 4, lines 2-6.) The Examiner argues that holders 5 are "formed by" teeth 15, guide shoe 24, metallic insert 37 and/or retaining element 26. (Final Office Action, page 6.) However, for the reasons discussed above with regard to Boltshauser, Applicants submit that holders 5 are not "opposed holding means" as that term is used in the present Application, and that Dornieden fails to show or disclose "the corresponding structure described in the specification and equivalents thereof." See M.P.E.P. § 2181. Significantly, the holders 5 of Dornieden are not formed on the conveyor belts and do not enable the objects to be worked upon by upper and

lower tools, and, furthermore, do not mate with the outer circumference of the covers themselves in order to fix the covers in the transport direction, in the direction opposite to the transport direction, and in the direction perpendicular to the transport plane.

Accordingly, Applicants submit that amended claim 2 is not anticipated by Dornieden, and respectfully request that the rejection thereof be withdrawn.

Finally, regarding the rejections of claims 2-5, 9, 14 and 18 under 35 U.S.C. § 103(a) as obvious over AAPA, in view of Dornieden, the Examiner concedes that the AAPA fails to teach or suggest two conveyor belts arranged parallel to one another and driven in synchronism, on which conveyor belts individual object receivers are formed by opposed holding means, but argues that these features are taught by Dornieden, and that claims 13, 14 and 18 are obvious over the combination of AAPA and Dornieden. (Final Office Action, pages 7-10.) Applicants respectfully disagree with the Examiner.

An obviousness rejection is improper unless supported by a clearly stated *prima facie* case of obviousness. A *prima facie* case of obviousness under 35 U.S.C. § 103(a) is established only if the prior art would have taught or suggested the claimed subject matter “as a whole” to a person of ordinary skill in the art, at the time of the claimed invention.

Applicants submit that amended claims 14 and 18 are not obvious over the combination of AAPA and Dornieden, at least because neither AAPA nor Dornieden teaches or suggests “two conveyor belts arranged parallel to one another and driven in synchronism, on which conveyor belts individual object receivers are formed by opposed holding means.” As is set forth in Figures 1 and 2, and in paragraphs 0014 and 0015 of the specification, and as was conceded by the Examiner, the AAPA fails to teach or suggest individual object receivers, and the object receivers taught by Dornieden are not “formed by opposed holding means.” In fact, Dornieden fails to teach or suggest any such receivers, for the holders 5 are not fixed to the conveyor belts and do not enable the objects to be worked upon by upper and lower tools, and, furthermore, do not mate with the outer circumference of the covers themselves in order to fix the covers in the transport direction, in the direction opposite to the transport direction, or in the

direction perpendicular to the transport plane. Applicants submit that neither the AAPA nor Dornieden teaches or suggests “the corresponding structure described in the specification and equivalents thereof,” *see* M.P.E.P. § 2181, and thus cannot teach or suggest the “individual object receivers . . . formed by opposed holding means” recited in amended claims 2 or 18. Accordingly, Applicants submit that amended claims 2 and 18, along with claims 3-5, 9 and 14, which depend from amended claim 2, are also not obvious over AAPA and Dornieden, for at least the foregoing reasons, and respectfully request that the rejections thereof be withdrawn.

As is set forth above, Applicants have added new claims 20 and 21 to the subject Application. New claim 20 depends from amended claim 2 and further recites that each of the plurality of processing stations is adapted to process only a single object at a time. New claim 21 depends from amended claim 2 and further recites that the processing device is adapted to produce metal covers with tear-off foils.

Applicants submit that new claims 20 and 21 are neither disclosed nor suggested in Boltshauser, Dornieden or the AAPA. Accordingly, for the foregoing reasons, and for those set forth above with regard to the rejections of amended claim 2, Applicants submit that new claims 20 and 21 are presently allowable, and respectfully request that they be passed to issue.

Applicants respectfully submit that nothing in the amendments to claims 2-5, 9, 14, 15 and 18, or in new claims 20 and 21, constitutes new matter, and that the foregoing amendments are fully supported by the specification and drawings as filed.

As Applicant has addressed or traversed each and every rejection raised by the Examiner in the outstanding Office Action, Applicant respectfully requests that the present rejections and objections be withdrawn, and that claims 2-5, 9, 14, 15, 18, 20 and 21 be passed to issue.

Application Serial No.: 10/556,660
Final Office Action mailed June 18, 2010
Response to Final Office Action dated August 18, 2010

Applicants believe that no fees are due in connection with the filing of this Amendment and Response, or with the addition of new claims 20 and 21. If any fees are deemed necessary, however, Attorneys for Applicant hereby authorize the Commissioner to deduct such fees from our Deposit Account 13-0235.

Respectfully submitted

/ Richard J. Twilley /
Richard J. Twilley
Registration No. 63,359
Attorney for Applicants

Customer No. 35301
McCORMICK, PAULDING & HUBER, LLP
CityPlace II, 185 Asylum Street
Hartford, CT 06103-3410
(860) 549-5290